

February 13, 2014

via electronic filing

Marlene H. Dortch
Secretary, Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation
Closed Captioning Quality • CG Docket No. 05-231 • PRM-11-CG
Closed Captioning of IP-Delivered Video • MB Docket No. 11-154

Dear Ms. Dortch,

On February 11, 2014, Claude Stout of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Andrew Phillips of the National Association of the Deaf (NAD), and Lise Hamlin of the Hearing Loss Association of America (HLAA) (collectively, “Consumer Groups”), and Blake Reid of the Samuelson-Glushko Technology Law & Policy Clinic at Colorado Law (TLPC) discussed pending Commission action in the above-referenced matters with Adonis Hoffman and Stefanie Frank of Commissioner Mignon Clyburn’s office and again with Commissioner Jessica Rosenworcel and Clint Odom of Commissioner Rosenworcel’s office. On Feb. 12, 2014, Mr. Stout also submitted the attached e-mail to the listed members of the Commission

We commended the Commission’s groundbreaking progress toward implementing closed caption quality standards, an issue that has remained of critical importance to the deaf and hard of hearing community for more than 15 years. We deeply appreciate the hard work of Chairman Wheeler’s office, members of the Consumer and Governmental Affairs and Media Bureaus, and our colleagues in the industry for their hard work on shaping an item on caption quality that will dramatically improve access to video programming for consumers who are deaf or hard of hearing.

In particular, we underscored our strong support for the Commission’s decision to place the item on the agenda for the next open Commission meeting on February 20, 2014.¹ We believe that this critically important issue warrants public discussion and a demonstration of the essential components of high-quality captions and the dangers of poor-quality captions, as well as a sufficient period for final Commission deliberation under the Sunshine rules on the immense implications of the item for equal access to video programming for Americans who are deaf or hard of hearing.

¹ See *Commission Meeting Agenda*, Public Notice, at 1 (Feb. 12, 2014), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0212/DOC-325603A1.pdf.

We also recognized that achieving caption quality will be an ongoing process requiring collaborative action from the Commission, industry, and consumers. In the immortal words of Winston Churchill, we acknowledge and appreciate that this item is not the end—or even the beginning of the end—of our work toward fulfilling the promise of accessibility embedded in the Telecommunications Act of 1996 and the Twenty-First Century Communications and Video Accessibility Act of 2010.

Nevertheless, we urged the Commission to emphasize the need for prompt and decisive action on items raised in the impending item. In particular:

- **The Commission must act swiftly to ensure that video programmers are responsible and accountable for meeting the quality standards set forth in the item.** We understand that the item, as drafted, leaves video programming distributors (“VPDs”) responsible for exercising best efforts to obtain certifications from video programming providers (“VPPs”) that the VPPs are complying either with the quality standards laid out in the item or the best practices for achieving quality captions, and that VPDs must report non-certifying VPPs to the Commission for inclusion in a public database. However, this arrangement temporarily leaves *no one* responsible or accountable for *complying* with the quality standards or best practices, instead leaving to the item’s Further Notice of Proposed Rulemaking (“FNPRM”) a “tentative conclusion” that VPPs should become responsible for compliance with the standards and practices. We urge the Commission to resolve this untenable loophole by either:
 - Modifying the Order to immediately assign responsibility for compliance with quality standards and best practices to VPDs, as the Commission has successfully done with basic closed captioning obligations since the inception of its captioning rules;² or
 - Firmly committing to address the FNPRM’s tentative assignment of responsibility to VPPs on an expedited basis to ensure that this issue is resolved in a matter of months rather than years.

² See *Ex Parte of CBS Corp., et al.*, CG Docket No. 05-231, at 1-3 (Feb. 10, 2014), *available at* <http://apps.fcc.gov/ecfs/document/view?id=7521072013>. We share the concern of several VPPs that reassigning liability for captioning quality issues could result in less cooperation and finger-pointing when problems arise—a dynamic that has already arisen in the context of enforcing the Commission’s Internet Protocol (“IP”)-captioning rules. See *id.* at 4; *Reply of TDI, et al. to Amazon.com*, Closed Captioning Complaint # 12-C00454509-1, MB Docket No. 11-154, at 3-4 (Dec. 11, 2013), *available at* <http://apps.fcc.gov/ecfs/document/view?id=7520961650> (urging the Commission to deny confidential treatment of the identities of video programming owners alleged by a VPD to be responsible for a variety of captioning problems).

- **The Commission should ensure that the highest quality methods of captioning are used wherever feasible.** While we expect that the principles and rules embedded in the item will improve the quality of captions generated using a variety of methods, the method selected will often prove determinative of captions' level of completeness, accuracy, synchronicity, and proper placement. In general, the quality of offline captions will far exceed that of real-time captions, and the quality of real-time captions will far exceed those generated using the Electronic Newsroom Technique ("ENT"). Bearing that dynamic in mind:
- **The Commission should strictly limit the situations where real-time captions can be used for non-live and rebroadcast live programming.** Because the quality of offline captions far exceeds that of real-time captions, programmers should rely on offline captions in all situations except where it is logistically infeasible to use them, such as where a program is aired live or recorded so close to air that there is insufficient time for a diligent captioner to utilize offline captions. For the same reason, the Commission should require the recaptioning of programming originally captioned in real-time where the time period between the original airing and the rebroadcast is sufficient to facilitate offline captioning. We strongly urge the Commission to tentatively adopt these conclusions in the FNPRM and build a record on the minimum time periods prior to air or rebroadcast necessary for captioning programs of a particular length using a high-quality offline method.
- **The Commission should eliminate or narrow proposed exemptions for captioning pre-recorded programming in real-time.** Consistent with the principle of using offline captions where feasible, the Commission should tentatively conclude in the FNPRM that the "commercially reasonable" exemptions proposed by the National Cable and Telecommunications Association are unrelated to feasibility and should be eliminated.³

³ *Ex Parte of NCTA*, CG Docket No. 05-231, Best Practices at 2-3 (Feb. 7, 2014), *available at* <http://apps.fcc.gov/ecfs/document/view?id=7521071546>. For example, the invocation of "proprietary or confidentiality considerations" in showing sensitive video to captioners in advance of a program's airtime can be addressed by the use of non-disclosure agreements, just as it is with the many other third parties involved with a program's production.

- **The Commission should condition the continued use of ENT on substantial technical improvements that result in captions comparable to real-time captions and firmly commit to re-evaluating ENT in no more than one year.** In reviewing the continued use of ENT, the Commission should demand that the industry provide records and hard data that demonstrates:
 - The extent to which ENT captioning has overcome its historical failure to meet the four quality principles of accuracy, completeness, synchronicity, and placement, including metrics for representative samples of programming compared to similar programming captioned in real-time;
 - The quantity and percentage of uncaptioned programming, such as unscripted breaking news, that is delivered by stations in markets where ENT is permissible;
 - The economic necessity for individual stations to continue using ENT in lieu of real-time captioning;
 - The impact of ENT usage on the ability of consumers who are deaf or hard of hearing in markets outside the top 25 to access the unique local programming offered by stations in those markets;⁴
 - The extent to which consumers have filed complaints about ENT;
 - The state of the market for real-time captioners; and
 - Technological progress toward achieving improvements with ENT.

Finally, we commended the Commission for its attention not only to resolving long-languishing caption quality problems, but to turning its attention toward correcting its initial misstep of omitting video clips from the scope of its IP captioning rules. We directed the Commission's attention toward our recently filed report on the state of captioning on IP-delivered video clips and highlighted the need for swift action to ensure that Americans who are deaf or hard of hearing are able to IP-delivered news, entertainment, and other programming on equal terms.⁵

⁴ See *Remarks of Commissioner Ajit Pai*, Radio Show Luncheon (Sept. 23, 2013), *available at* <http://www.fcc.gov/document/commissioner-pai-remarks-radio-show-luncheon>.

⁵ See *Comments of TDI, et al.*, MB Docket No. 11-154 (Feb. 3, 2014), *available at* <http://apps.fcc.gov/ecfs/comment/view?id=6017587315>.

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Please don't hesitate to contact me if you have any questions regarding this filing.

Respectfully submitted,

/s/

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Cc:

Meeting attendees and e-mail recipients